

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

JULIE PARKER,

*Plaintiff,*

*-against-*

HOWARD RUBIN,

*Defendant.*

Index No.: 650126/2018

Hon. Doris Ling-Cohan

**ANSWER TO AMENDED COMPLAINT OF HOWARD RUBIN**

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*Attorneys for Defendant Howard Rubin*

**ANSWER TO AMENDED COMPLAINT**

Howard Rubin, by and through its attorneys, Dechert LLP, hereby answers as follows, based upon knowledge and information, with each answer corresponding to the numbered allegation in Plaintiff's Amended Complaint, (Doc. No. 22).

1. Denied.
2. Rubin is without sufficient knowledge or information to form a belief as to the truth of the allegations.
3. Admitted.
4. This paragraph contains a legal conclusion and therefore no response is required.
5. This paragraph contains a legal conclusion and therefore no response is required.
6. This paragraph contains a legal conclusion and therefore no response is required.
7. Rubin is without sufficient knowledge or information to form a belief as to the truth of the allegations.
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11. Rubin is without sufficient knowledge or information to form a belief as to the truth of the allegations.
12. Rubin is without sufficient knowledge or information to form a belief as to the truth of the allegations.

13. Rubin is without sufficient knowledge or information to form a belief as to the truth of the allegations.

14. Rubin is without sufficient knowledge or information to form a belief as to the truth of the allegations.

15. Rubin is without sufficient knowledge or information to form a belief as to the truth of the allegations.

16. Admitted, that Rubin was not yet there when Plaintiff arrived. Rubin is otherwise without sufficient knowledge or information to form a belief as to the truth of the allegations.

17. Denied, that Rubin ordered any tequila. Otherwise, admitted.

18. Denied, that Rubin “asked [Plaintiff] to drink ‘more’ and get ‘comfortable.’” Otherwise, admitted.

19. Admitted, that Rubin had more than one drink and spent one to two hours at the restaurant. Rubin is otherwise without sufficient knowledge or information to form a belief as to the truth of the allegations

20. Admitted, to talking for over an hour. Otherwise, denied.

21. Denied.

22. Admitted, that Rubin is a genuinely nice person. Rubin is otherwise without sufficient knowledge or information to form a belief as to the truth of the allegations.

23. Denied, that Rubin insisted that Plaintiff drink and relax, or that Plaintiff had to comply with Rubin. Rubin is otherwise without sufficient knowledge or information to form a belief as to the truth of the allegations.

24. Denied, to the extent Plaintiff averred at the time that she was over the age of twenty-one.

25. Admitted, that Plaintiff was presented with a Confidentiality Agreement and Release. Otherwise, denied.

26. Denied, that the Confidentiality Agreement and Release signed by Plaintiff indicated that she could be sued for up to \$1,000,000. Otherwise, admitted.

27. Denied.

28. Admitted, that Plaintiff voluntarily and knowingly agreed to, and signed, the Confidentiality Agreement and Release and was not provided a copy of the document. Otherwise, denied.

29. Denied.

30. Denied.

31. Admitted, that Rubin rented an apartment in the Metropolitan Tower that was next door to the Russian Tea Room. Otherwise, denied.

32. Admitted, that Rubin had some photographs of women hung on the walls of the apartment. Otherwise, denied.

33. Denied.

34. Admitted, that Rubin and Plaintiff went to the apartment next door. Otherwise, denied.

35. Admitted, that Rubin's apartment was on the seventy-sixth floor of the Metropolitan Tower, located next door to the Russian Tea Room. Otherwise, denied.

36. Admitted.

37. Rubin is without sufficient knowledge or information to form a belief as to Plaintiff's perception of the apartment.

38. Admitted, that Rubin and Plaintiff entered the apartment. Otherwise, denied.

39. Admitted, that Rubin had some photographs of women hung on the walls of the apartment. Otherwise, denied.

40. Denied.

41. Denied.

42. Admitted, that Rubin's apartment had a second bedroom of approximately 200-300 square feet that contained toys and ropes. Denied, as to the characterization of the room as a "toy room," and to "electrocuting devices." Rubin is without sufficient knowledge or information to form a belief as to what Plaintiff may or may not have ever seen before. Otherwise, denied.

43. Rubin is without sufficient knowledge or information to form a belief as to Plaintiff's perception. Otherwise, denied.

44. Admitted, that Rubin and Plaintiff discussed the use of a safe word, and that Plaintiff selected the safe word in question, "Pineapples," for her own use. Otherwise, denied.

45. Denied.

46. Denied.

47. Denied.

48. Denied.

49. Denied.

50. Denied.

51. Denied.

52. Denied.

53. Denied.

54. Denied.

55. Denied.

56. Denied.

57. Denied.

58. Denied.

59. Denied.

60. Denied.

61. Denied.

62. Denied.

63. Denied.

64. Denied.

65. Denied.

66. Denied.

67. Admitted, that Plaintiff left the apartment. Denied, as to the characterization that Plaintiff had to “gather[] her clothes” or was in a rush to leave “as fast as she could” for any reason. Rubin is without sufficient knowledge or information to form a belief as to where Plaintiff went.

68. Denied, to the extent Rubin did nothing that would cause Plaintiff to scream or cry. Rubin is otherwise without sufficient knowledge or information to form a belief as to the truth of the allegations.

69. Denied, to the extent Rubin did nothing that would cause Plaintiff to be noticeably upset, shaking, anxious or in a panicked state. Additionally denied, as the video Plaintiff purports was taken shortly after her meeting with Rubin evidences no such condition of Plaintiff. Rubin is otherwise without sufficient knowledge or information to form a belief as to the truth of the allegations.

70. Denied, to the extent Rubin did nothing that would cause Plaintiff's life and emotional stability to "fall apart." Rubin is otherwise without sufficient knowledge or information to form a belief as to the truth of the allegations.

71. Denied, to the extent Rubin did nothing that would cause Plaintiff to drink or take drugs to forget any purported pain or memories. Rubin is otherwise without sufficient knowledge or information to form a belief as to the truth of the allegations.

72. Denied, to the extent Rubin did nothing that would cause Plaintiff to experience any anxiety or panic attacks, or depression. Rubin is otherwise without sufficient knowledge or information to form a belief as to the truth of the allegations.

73. Rubin is without sufficient knowledge or information to form a belief as to the truth of the allegations.

74. Denied.

75. Rubin is without sufficient knowledge or information to form a belief as to the truth of the allegations.

76. Rubin is without sufficient knowledge or information to form a belief as to the truth of the allegations.

77. Denied.

78. Denied, to the extent Rubin did nothing that would cause Plaintiff to keep a weapon in her room. Rubin is otherwise without sufficient knowledge or information to form a belief as to the truth of the allegations.

79. Denied, to the extent Rubin did nothing that would cause Plaintiff to attempt to commit suicide. Rubin is otherwise without sufficient knowledge or information to form a belief as to the truth of the allegations.

80. Denied.

81. Denied, to the extent Rubin did nothing that would cause Plaintiff to “attempt to find inner peace, [or] treat [any] anxiety, depression [or] substance abuse.” Rubin is otherwise without sufficient knowledge or information to form a belief as to the truth of the allegations.

82. Denied, to the extent Plaintiff suffered no “trauma” from her meeting with Rubin. Rubin is otherwise without sufficient knowledge or information to form a belief as to the truth of the allegations.

83. Rubin is without sufficient knowledge or information to form a belief as to the truth concerning Plaintiff’s travel. Otherwise, denied.

**CAUSE OF ACTION ONE**

**ACTION BY VICTIM OF CONDUCT CONSTITUTING CERTAIN SEXUAL  
OFFENSES AND ACTS PURSUANT TO CPLR § 213-C: FOR RAPE IN VIOLATION  
OF PENAL LAW §130.35; CRIMINAL SEXUAL ACTS IN VIOLATION OF PENAL  
LAW §130.50; AND AGGRAVATED SEXUAL ABUSE IN VIOLATION OF PENAL  
LAW §130.70**

**(By Plaintiff Parker Against Defendant Howard Rubin)**

84. Does not call for a response.

85. Denied.

86. Denied.

87. Denied.

88. Denied.

89. Denied.

90. Denied.

91. Denied.

92. Denied.

93. Denied.

94. Denied.

95. Denied.

**ANSWER TO PRAYER FOR RELIEF**

Plaintiff's claim and prayer for relief should be denied in their entirety, and the Court should award Rubin attorneys' fees and costs incurred in defending this meritless litigation.

**CAUSE OF ACTION TWO**  
**FRAUD IN THE INDUCEMENT**  
**(Against Defendant Rubin)**

96. Does not call for a response.

97. Denied.

98. Denied.

99. Denied.

100. Rubin is without sufficient knowledge or information to form a belief as to the truth of the allegations.

101. Denied.

102. Rubin is without sufficient knowledge or information to form a belief as to Plaintiff's personal information. Otherwise, denied.

103. Denied.

104. This paragraph contains a legal conclusion and therefore no response is required.

105. Denied.

106. Denied.

107. Denied.

108. Denied.

109. Denied.

**ANSWER TO PRAYER FOR RELIEF**

Plaintiff's claim and prayer for relief should be denied in their entirety, and the Court should award Rubin attorneys' fees and costs incurred in defending this meritless litigation.

**RUBIN'S AFFIRMATIVE DEFENSES**

By way of a further Answer and as affirmative defenses, Rubin denies that he is liable to Plaintiff for any of the claims alleged, and denies that Plaintiff is entitled to damages or any other relief whatsoever, and states as follows:

**FIRST AFFIRMATIVE DEFENSE**  
**(Failure to State a Claim)**

1. The Amended Complaint, and each purported claim for relief alleged therein, fails to state a claim upon which relief can be granted against Rubin as a matter of law and fact.

**SECOND AFFIRMATIVE DEFENSE**  
**(Consent)**

2. Plaintiff's claims are barred, in whole or in part, because Plaintiff expressly and/or impliedly consented to and/or had knowledge of all activities alleged in the Amended Complaint to have caused her harm.

**THIRD AFFIRMATIVE DEFENSE**  
**(Acquiescence)**

3. Plaintiff's claims are barred, in whole or in part, by the doctrine of acquiescence.

**FOURTH AFFIRMATIVE DEFENSE**  
**(Laches)**

4. Plaintiff's claims are barred, in whole or in part, by the doctrine of laches.

**FIFTH AFFIRMATIVE DEFENSE**  
**(Unclean Hands)**

5. Plaintiff's claims are barred, in whole or in part, by virtue of her own unclean hands.

**SIXTH AFFIRMATIVE DEFENSE**  
**(Privilege)**

6. Rubin asserts that his conduct was privileged and justified in that, among other things, in taking certain actions alleged in the Amended Complaint, he was asserting his legal right to engage in the conduct alleged, with a good faith belief in that right.

**SEVENTH AFFIRMATIVE DEFENSE**  
**(Assumption of Risk)**

7. Plaintiff's claims are barred, in whole or in part, because Plaintiff expressly and/or impliedly assumed the risk of the actions described in the Amended Complaint.

**EIGHTH AFFIRMATIVE DEFENSE**  
**(Ratification)**

8. Plaintiff ratified and/or accepted the alleged acts or omissions alleged in the Amended Complaint.

**NINTH AFFIRMATIVE DEFENSE**  
**(Waiver)**

9. Plaintiff's claims are barred, in whole or in part, by the doctrine of waiver.

**TENTH AFFIRMATIVE DEFENSE**  
**(Settlement and Release)**

10. Plaintiff's claims are barred, in whole or in part, by the doctrine of settlement and release because, among other reasons, Plaintiff executed a Confidentiality Agreement and Release whereby she released the claims she asserts in this case.

**ELEVENTH AFFIRMATIVE DEFENSE**  
**(Failure to Mitigate)**

11. If Plaintiff has suffered any injury or harm, which Rubin expressly denies, her recovery or entitlement to relief is barred by her failure to mitigate, reduce, or otherwise avoid her alleged damages or injury.

**TWELFTH AFFIRMATIVE DEFENSE**  
**(No Damages)**

12. Plaintiff's claims are barred, in whole or in part, because she has suffered no actual injury as a result of the actions alleged in the Amended Complaint.

**THIRTEENTH AFFIRMATIVE DEFENSE**  
**(Good Faith)**

13. Rubin alleges that at all times he acted in good faith and within reasonable standards as to the matters alleged in the Amended Complaint.

**FOURTEENTH AFFIRMATIVE DEFENSE**  
**(No Causation)**

14. If Plaintiff has suffered any injury or harm, which Rubin expressly denies, such harm was not caused by Rubin.

**FIFTEENTH AFFIRMATIVE DEFENSE**  
**(Speculative Damages)**

15. Plaintiff's claims are barred, in whole or in part, because Plaintiff's alleged damages are speculative.

**SIXTEENTH AFFIRMATIVE DEFENSE**  
**(Comparative Fault)**

16. If Plaintiff has suffered any injury or harm, which Rubin expressly denies, such harm is a result of comparative fault of Plaintiff such that any disbursement from Rubin is barred and/or must be adjusted or eliminated.

**SEVENTEENTH AFFIRMATIVE DEFENSE**  
**(Contribution)**

17. Plaintiff's claims are barred, in whole or in part, because any and all violations alleged in the Amended Complaint were proximately caused or contributed to by the acts, omissions, or conduct of persons or entities other than Rubin.

**EIGHTEENTH AFFIRMATIVE DEFENSE**  
**(Set-Off)**

18. Any monies or other consideration claimed to be owed to Plaintiff by Rubin represents amounts to which Rubin is entitled to equitable, statutory, and/or contractual set-off.

**NINETEENTH AFFIRMATIVE DEFENSE**  
**(Misrepresentation)**

19. Plaintiff is not entitled to the relief requested as a result of fraud and/or misrepresentation (whether intentional or negligent) perpetrated by Plaintiff and/or her agents.

**TWENTIETH AFFIRMATIVE DEFENSE**  
**(Frivolous Claims)**

20. Plaintiff's claims are asserted in bad faith and are frivolous, unreasonable, and without foundation. Rubin is therefore entitled to an award of costs and expenses of litigation, including reasonable attorneys' fees.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**  
**(Failure to Join Necessary Parties)**

21. Plaintiff's claims are barred, in whole or in part, due to Plaintiff's failure to join necessary parties.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**  
**(Plaintiff's Breach)**

22. Plaintiff's claims are barred, in whole or in part, by Plaintiff's breaches of relevant contractual provisions.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**  
**(Spoliation)**

23. Plaintiff's claims are barred, in whole or in part, by Plaintiff's spoliation of evidence.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**  
**(Intervening or Superseding Cause)**

24. If Plaintiff has suffered any injuries or harm, which Rubin expressly denies, such damage was a direct and proximate and/or legal result of the intervening, superseding actions on the part of other persons or entities, and such intervening, superseding actions bar recovery herein against Rubin.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**  
**(Right to Assert Additional Defenses)**

27. Rubin presently has insufficient knowledge or information on which to form a belief as to whether he may have additional, yet unstated, affirmative defenses. Rubin reserves the right to assert additional affirmative defenses in the event discovery or further investigation indicates that additional affirmative defenses would be warranted.

Date: March 13, 2019  
New York, NY

Respectfully submitted,

s/ Edward A. McDonald  
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